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# KENT, BEATTY & GORDON, LLP

ATTORNEYS AT LAW

ELEVEN TIMES SQUARE  
NEW YORK, NY 10036

PHONE: (212) 421-4300 FAX: (212) 421-4303  
WWW.KBG-LAW.COM

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DOCUMENT  
ELECTRONICALLY FILED  
DOC #: \_\_\_\_\_  
DATE FILED: 4/9/2021

## MEMO ENDORSED

### VIA ECF

The Honorable Valerie E. Caproni  
United States District Judge  
Thurgood Marshall United States Courthouse  
40 Foley Square  
New York, New York 10007

April 7, 2021

Application GRANTED.

SO ORDERED.

*Valerie Caproni*

4/9/2021

Re: *TIAA v. Malafa*, 21-CV-2935-VEC

HON. VALERIE CAPRONI

UNITED STATES DISTRICT JUDGE

Dear Judge Caproni:

We represent Plaintiff Teachers Insurance & Annuity Association of America (“TIAA”). Pursuant to Your Honor’s Individual Practices, we write to request permission to file under seal two exhibits related to the Plaintiff’s Proposed Order to Show Cause for a Preliminary Injunction and Temporary Restraining Order. Those exhibits are:

- An email from a TIAA client to defendant Malafa’s former TIAA email address (Declaration of Kenneth Bane dated April 6, 2021 (“Bane Decl.”) Ex. C); and
- An email from defendant Malafa to another TIAA client (Bane Decl. Ex. E).

We request that undredacted versions of these exhibits be filed under seal in order to protect the private information of TIAA’s clients. We will publicly file redacted versions of these exhibits.

While a presumption of public access applies to judicial documents, *e.g.*, documents relevant to the performance of the judicial function and useful in the judicial process, the weight of the presumption is “governed by the role of the material at issue” and the resulting value of such information to the public. *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119 (2d Cir. 2006). Courts must also balance against the weight of the presumption any countervailing factors, such as “the privacy interests of those resisting disclosure” including “the degree to which the subject matter is traditionally considered private rather than public” and the “nature and degree of injury” resulting from disclosure. *See Lugosch*, 435 F.3d at 120. Here, TIAA’s client information is not just private but a trade secret, *see ExpertConnect, L.L.C. v. Fowler*, 2019 WL 3004161, at \*5 (S.D.N.Y. July 10, 2019), and we submit that these limited redactions are appropriate.

Respectfully submitted,

*Jack A. Gordon*  
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